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CURRENT TOPICS

Legal Aid: First Impressions

AN encouraging picture of the manner in which the legal aid machine is swinging into action was given by the LORD CHANCELLOR at a Press conference held at The Law Society's Hall on 17th October. Viscount Jowitt declared that he had never had a better body of persons to work with than in connection with legal aid, and he revealed the impressive fact that about 8,500 solicitors and 1,500 barristers are now on the panels. This showed, he said, that—taking into account the numbers who engage in litigation—substantially the whole of both branches of the profession are now supporting the scheme. First reports showed that during the first fortnight over 5,000 persons have called at local offices, but a very much larger number have applied for application forms for civil aid certificates. It has, however, been found that about half the forms completed by applicants without professional advice have been defective, mainly by reason of insufficient information to enable local committees to judge whether a *prima facie* case exists. There is no doubt a difficulty here, for there is no provision whereby solicitors advising on the completion of application forms can be reimbursed out of the legal aid fund, and until legal advice becomes a part of the service applicants will be faced with the choice of consulting a solicitor in the ordinary way or of completing the forms themselves. The Lord Chancellor made it clear, however, that a close watch would be kept on the difficulties of applicants with a view to any simplification of the forms that may be possible. Some 2,800 completed forms of application have been referred to the Assistance Board for report, and present indications are that the Board is able to report within seven to ten days—a time which may be reduced when the machinery has settled down. One of the most significant facts which has so far become apparent is that about 60 per cent. of the applicants would not have been eligible for assistance under the old Poor Persons procedure. Not unexpectedly, some 80 per cent. of the applications so far received relate to matrimonial causes, but the Lord Chancellor did not anticipate that this state of affairs would last for more than a year or so, and he emphasised that any necessary steps would be taken to prevent heavy arrears of work from accumulating in this field. The value of the provisions for the issue of emergency certificates has already been amply demonstrated, for in the first fortnight about 165 such certificates were granted and, as an illustration of the expeditious working of this procedure, it is interesting to record that on 3rd October, the second day of the scheme's operation, a case under an emergency certificate was actually tried. While it is too early for any definite conclusions to be drawn, there seems to be good ground for believing that the scheme has made an auspicious start.

A Law Society for London?

LONDON solicitors should need no urging to attend in good numbers the meeting to be held at The Law Society's Hall at 5 p.m. on Thursday, 26th October. The purpose of the meeting is to ascertain the views of London members of The

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Law Society on whether some closer association of London members is desirable to enable such members to express their views on matters of general professional interest and, if so, what form such association should take. Here is a question which touches closely the professional life of something approaching one-third of the practising members of the profession : a section, moreover, whose problems and interests are in many respects different from those of their provincial brethren and whose collective views, therefore, ought *prima facie* to be capable of separate representation in the councils of the profession. We hesitate to think that the sparse attendance at an earlier meeting held for this purpose last December betokens a lack of interest in this important matter ; if that were indeed so, the vision and percipience of the London practitioner would stand condemned. But we refuse to believe that he suffers from this form of myopia and prefer to think that the earlier meeting may have escaped his attention. The arguments in favour of the formation of a London Law Society, or alternatively of a number of district societies serving the area, are formidable and merit a full discussion by as many of those affected as can arrange to be present.

Courts (Emergency Powers) Act, 1943

SUNDAY, the 8th October, has at last been declared to be the date of the ending of the emergency which was the occasion of the passing of the Courts (Emergency Powers) Act, 1939, and on that date, therefore, the Act of 1943 lapsed by virtue of s. 14 thereof. The Order in Council fixing this date (the Courts (Emergency Powers) (End of Emergency) Order, 1950 : S.I. No. 1647), although duly made on 9th October in accordance with the announcement published in our issue of 7th October (p. 629, *ante*), was unfortunately not available to us until after last week's issue had gone to press. This has apparently caused some readers misgivings as to whether the earlier announcement by the Lord Chancellor's Office had in fact been implemented and aptly illustrates the uncertainties which arise from even a day or two's delay in the publication of important orders by H.M. Stationery Office.

Procedure for Claims on the £300m. Fund

THE Central Land Board announced on 11th October that before they issue their determination of the development value in land which is the subject of a claim under Pt. VI of the Town and Country Planning Act, 1947, the district valuer issues on the Board's behalf a " notice of statement of proposed development value " on a form bearing a C.V. number. If the claimant agrees to the district valuer's figures on this form, or if no objection is received by the district valuer, the Board issue their determination (form S.2) after sixty days. A claimant may object on a detachable part of the C.V. form within the sixty days and the grounds of objection will then be considered before the Board issue their determination. If the claim has been wholly assigned to one assignee, form S.2 is sent to the assignee. If only part of the claim has been assigned, the form is sent to the assignor and a copy to the assignee. In all cases where the Board have received notice that there was on 1st July, 1948, a mortgage or rent-charge owner, he will receive a copy of S.2. Where a professional adviser is employed, the C.V. form and S.2 are addressed to the claimant " care of " the professional adviser at the latter's address. After a determination has been issued, an appeal may be lodged within thirty days. If no appeal is lodged, the determination becomes final. If a professional adviser has been employed, and the conditions set out in para. 16 of the Board's pamphlet S.1.A are satisfied, the claimant will receive the Board's contribution (on the scale laid down in the appendix to S.1A) towards the fees he has incurred in the form of a payable order as soon as possible after the determination has become final.

Liability of Coal Board

AN important test case affecting the liabilities of the National Coal Board to their workmen was decided against the National Coal Board in a case at the Llanelly County Court on 10th October (*The Times*, 11th October). His Honour JUDGE MORGAN, K.C., held that workmen incapacitated by disease could look only to the Board for compensation where the disease manifested itself after the primary vesting date of the coal industry. The Coal Board had applied for an apportionment of compensation payments in respect of miners said to have contracted industrial diseases before the vesting date. The actual amount stated to have been involved in this case, which was heard on 6th and 7th July, 1950, was between £4,000,000 and £5,000,000.

A New Provident Fund for Law Clerks

THE announcement by the United Law Clerks' Society of a new provident fund, to be run alongside the Society's present funds, will be of especial interest to women clerks, to whom membership of the Society's general benefit fund is not open. Women are invited to become members of the new fund on exactly the same terms as men, and the arrangements include a dowry benefit on marriage if desired. The distinctive feature of the new fund is that it is designed on the so-called Holloway principle, under which the contributions are deliberately in excess of the sickness risk in order to provide savings. Members' contributions form a common fund to provide sickness benefit, and the surplus each year is credited to members' individual accounts, where it is accumulated with interest, free of income tax, and paid in a lump sum at the age of sixty-five (sixty for women) or on earlier death or, in the case of women, marriage. Membership carries with it all the other benefits of the Society, and male clerks may belong to both this and the general benefit fund. Full particulars may be obtained from the Society at 2 Stone Buildings, Lincoln's Inn, W.C.2.

Recent Decisions

In *Re Hynes, deceased*, on 11th October (*The Times*, 12th October), in the Court of Appeal (the MASTER OF THE ROLLS and ASQUITH and JENKINS, L.JJ.), it was held that a bequest of " books and furniture and other personal belongings " did not include stocks, shares, and cash in bank and at the Post Office, and that the deceased died intestate as regards that part of his estate.

In *Sharp* v. *Minister of Pensions*, on 13th October (*The Times*, 14th October), ORMEROD, J., held that the procedure adopted by the Ministry in a pensions appeal, while not objectionable in law, was nevertheless one which should be avoided, as a state of affairs in which an appellant felt that he had been unfairly treated should not arise. The pensions appeal tribunal asked for a report by an independent medical expert, who reported in favour of the applicant. The tribunal, however, rejected his report in favour of a contrary opinion by another expert, which was included by the Ministry in a comment on the independent expert's report.

In a case on 13th October (*The Times*, 14th October), BARRY, J., held that damages for breach of contract might in a proper case be recoverable for substantial inconvenience, as opposed to mere annoyance and injury to the feelings, where the inconvenience could reasonably be contemplated as a probable result of the breach of contract.

Costs

COUNTY COURT—III

WE have discussed in the last two articles some of the points arising in regard to county court costs, and reference has frequently been made to the scales of costs set out in App. B to the County Court Rules, 1936, as subsequently amended. It will be useful to consider these scales in more detail now.

As we have seen, there are three scales, namely, scales 1, 2 and 3. The items set out in scale 1 are chargeable where the amount claimed or recovered exceeds £2 but does not exceed £10, and the charges, it will be found, are not very remunerative. Thus, there is no fee for instructions to act, and all that the solicitor is allowed is a charge of 10s. for preparation of particulars of claim or counterclaim, including the necessary copies, together with a further 3s. if the summons is served by the solicitor. This is, of course, the plaintiff's solicitor's fee. All that the defendant's solicitor is entitled to for taking instructions, preparing the defence, and attending the trial, with or without counsel, is an inclusive charge of £1. It is true that there is a note appended to the scale to the effect that where counsel is not instructed this item may be increased in a case of difficulty to a sum not exceeding £3, but in order to obtain this increased allowance an order has to be obtained from the judge or registrar who heard the action.

The plaintiff's solicitor will be entitled to a fee of 10s. for preparing for and attending the trial with or without counsel, but this fee also may be increased to a sum not exceeding £2 10s., if so ordered by the judge or registrar who hears the action, in cases of difficulty.

It will be noticed that both the plaintiff's and the defendant's solicitors' fees for preparing for trial are the same whether they have to draw and copy a brief to counsel or whether they attend and conduct their clients' case at the trial themselves. Where counsel is engaged his fee is fixed at a maximum of two guineas, with, of course, the usual clerk's fee.

It will thus be seen that under scale 1 the remuneration of the solicitor is very low indeed, and it is as well to remind ourselves at this juncture that the scale applies as well between solicitor and client as between party and party, so that unless the solicitor comes to an agreement with his client as to the remuneration that he is to receive he will normally find himself out of pocket in cases to which scale 1 applies.

Scales 2 and 3 in App. B apply respectively to cases involving between £10 and £20, and cases involving a sum exceeding £20.

It will be recalled that under the old scale, before it was amended by the County Court (Amendment) Rules, 1950, the items under the two highest scales of the county court costs were subject to an increase of 50 per cent. There is now no provision for adding 50 per cent. to the total bill of costs under any of the county court scales, since the increase has been taken into account in fixing the amount of the allowances set out in the scales. Thus, to take a simple example, the allowance for any necessary attendance on clients, which under the old scale was allowed at 6s. 8d., is now allowed at 10s.

The allowances under scales 2 and 3 do not, in the main, vary much, and it will be found that in some instances the fees under the two scales are the same. Thus, in both cases the allowances for preparing documents not otherwise provided for is 5s., and the same allowance is made under both scale 2 and scale 3 for perusing documents not otherwise provided for. In other cases the allowances vary between limits which overlap, and the registrar has discretion to fix the allowance between these limits, with the result that he may direct that the same allowance shall be granted for the same item in two different cases, the one under scale 2 and the other under scale 3. In one instance the fees do vary considerably, and this is in respect of the item for preparing for trial. Under scale 2 the allowance may vary between £1 and £3, whilst under scale 3 it may vary between £2 and £15. In addition to this last-mentioned fee for preparing for trial, the solicitor will also be entitled to a further fee for actually attending the trial without counsel. Thus, under scale 2 he will be entitled to an allowance of between £1 and £2, whilst under scale 3 he will be entitled to between £2 and £10, at the discretion of the registrar. Where counsel is engaged, as we have seen, the solicitor will not receive any greater allowance for drawing and copying the brief and attending counsel therewith than he would have received for preparing for the trial without counsel, but he will be entitled to a fee for attending the trial of between 10s. and £1 under scale 2, or between £1 and £2 under scale 3.

It will be observed that no provision is made anywhere in the scales for the solicitor's costs in respect of matters where the amount claimed or recovered is less than £2, unless the judge can be persuaded to grant a certificate under r. 13, as amended, that the case involved a difficult question of law or a question of fact of exceptional complexity. This means that no costs can be recovered from the unsuccessful party, nor, presumably, can any be recovered from the client, at least so far as the action is concerned, unless some arrangement has been made with the client for the payment of a sum by way of remuneration.

Under r. 3 of Ord. 47 the registrar of the court is the taxing officer, and normally costs awarded to a party must be taxed. There are three instances, however, where taxation is unnecessary. First, where costs are awarded under scale 1 they may be fixed and allowed without taxation. Secondly, where the party entitled to costs under scales 2 or 3 states at the hearing that he does not claim charges in excess of the amount shown in App. E, then again the costs may be allowed without taxation. Thirdly, in certain instances, notably where the defendant pays the amount of the claim or gives up possession of land, the fixed costs provided by App. D and endorsed on the summons will be recoverable without taxation.

The fixed costs set out in App. D represent the amounts which the solicitor for the plaintiff is entitled to receive if the defendant pays the amount of the debt claimed, or gives up possession of the land or property and pays the arrears of rent, where the claim is for possession and arrears of rent. It is not thought, however, that the judge's discretion under r. 15 of Ord. 47 is intended to be fettered, and, in suitable and proper cases, the judge seemingly may direct that the fixed costs shall not apply, and he may then direct under what scale the costs of the proceedings shall be awarded.

The scales of fixed costs under App. D are contained in three tables set out in Pt. I of the appendix, whilst further directions are contained in Pt. II as to the amounts to be entered where judgment is signed in an action for the recovery of a sum of money. The appropriate amount for costs will be entered on the summons according to the amount of the debt claimed. Table I applies where the amount claimed exceeds £2 but does not exceed £10, whilst Table II applies where the amount claimed exceeds £10, and it applies also to

a summons for possession, with which we will deal in more detail later. Table III applies to a garnishee summons where the amount claimed exceeds £10. Where the claim under the garnishee summons is for less than £10 then the scales under Table I will apply.

Prior to the recent amendments, the amount of the fixed costs varied according to whether the summons was an ordinary summons or a default summons, but under the amended rules the allowance is the same whether the action is commenced with an ordinary or a default summons, and the only element affecting the amount of costs is the amount claimed. Thus under the new rules, where a sum of £4 is claimed, the amount to be endorsed on the summons in respect of costs is 10s. with an additional 3s. where service is effected by the solicitor. If the sum claimed is £20 then the amount to be endorsed on the summons is £1 with an additional 8s. if service is effected by the solicitor. These latter items are the amounts to be endorsed on the summons in any case where the claim exceeds £10. Table III of the fixed costs provides the allowances in the case of garnishee summonses where the sum claimed exceeds £10, and the allowance, where service is not effected by the solicitor, is 13s., whilst if service is effected by the solicitor then the amount to be endorsed on the summons will be £1 8s.

If judgment is entered in the action, then in addition to the amounts endorsed on the summons, in accordance with Pt. I of the appendix, the solicitor will be entitled to certain further allowances set out in Pt. II of the Tables of Fixed Costs contained in App. D. Once again, it will be observed that the allowances provided by the amended scale include the authorised increase. Thus in the above examples, if judgment is signed for the amount of the debt in a default action, then in the case of a debt for £4 a further 5s. will be entered in the judgment, in addition to 10s. or 13s., as the case may be, endorsed on the summons, whilst in the case of the recovery of a debt of £20 a further 5s. will be entered, in addition to the sum of £1 or £1 8s. already endorsed on the summons.

Where the action is for the recovery of land, with or without a sum of money, then the matter under the old rules became somewhat more complicated, and for the purpose of fixing the amount of costs to be endorsed on the summons Table V in the appendix had been provided. This table arbitrarily divided land into three categories, and against each of the three categories, in col. 2 of the table, a sum of money was set, and this sum determined the appropriate scale in Tables I and II of the appendix to be applied in determining the amount to be endorsed on the summons.

Thus where no rent was reserved or the rent was nominal or was of a rate not exceeding 10s. per week the sum in col. 2 of the table was £5; where the rent was more than 10s. but did not exceed £1 per week the sum was £10; whilst if the rent exceeded £1 per week the sum was £20. If, for example, the action was to recover property of a weekly rental value of 30s. then the appropriate amount of costs to be endorsed on the summons was the costs applicable to an action for the recovery of a sum of £20, whilst if the action was to recover property of a rental value of 15s. per week, then the costs to endorse on the summons were the costs applicable to an action for the recovery of a sum of £10.

The matter has, however, been considerably simplified now, for the new scale provides only one fee in respect of solicitor's charges to be endorsed on a summons for the recovery of land, with or without a claim for a sum of money, and that is the amount of £1 authorised by Table II of App. D, where the summons is not served by the solicitor, or £1 8s. where the summons is served by the solicitor. This is much less complex than the allowance under the old rules before they were amended. Where, in addition to the recovery of the land, there is a claim for a sum of money, Table II of Sched. D will still apply, and the amounts to be endorsed on the summons will be those set out above.

It will, of course, be appreciated that the amounts set out in the appendix as representing the fixed costs to be endorsed on summonses are the solicitor's profit costs only, and in addition the normal court fees will be claimed.

J. L. R. R.

A SAFE SYSTEM OF WORKING: APPLICATION TO ROUTINE TASKS

MOST actions by a workman against his employer at common law are founded, either wholly or in part, on an allegation that the system of work was unsafe.

The principle that an employer is liable, as a personal obligation, for negligence in failing to provide a proper system of work was established by the House of Lords in *Wilsons and Clyde Coal Co.* v. *English* [1938] A.C. 57, which resuscitated old rules of law overlaid by an undue extension of the doctrine of common employment. In this case, however, it was not necessary to decide the exact scope of "system" because the facts had been established by the verdict of a Scottish jury. At this stage of the development of the law it was at least certain that care had to be taken to ensure that the general, permanent system was safe, but it was not certain whether it had to be adapted to changing conditions or to individual tasks which were unlikely to recur.

The law was carried much farther in *Speed* v. *Swift* [1943] K.B. 557. In that case the Court of Appeal held that in ship-loading operations, where the disposition of the apparatus may be different for successive tasks from day to day, it is the duty of the employer to see that the system is safely adjusted for each type of operation. In *Colfar* v. *Coggins* [1945] A.C. 197, another ship-loading case which failed on the facts, the House of Lords approved this decision, but Viscount Simon, L.C., expressed the opinion that the law could be stretched no farther. In a later case in the House of Lords, *Franklin* v. *Bristol Aeroplane Co.*, which turned on the facts and was not reported, the House again refused to extend the previous authorities. Viscount Simon remarked that, with the abolition of common employment, allegations of unsafe system should not be used as a roundabout way of circumventing that doctrine, but he did not question that such allegations could be made on proper evidence; it is obvious, of course, that under the present law an accident may be due to unsafe system though there has been no negligence by a fellow workman.

These authorities left the law uncertain with regard to the application of the principle of a safe system of work to everyday, routine tasks for which, as a rule, no general instructions are issued by the employer. There are many cases of this kind, especially where accidents arise out of the faulty loading or unloading of heavy lorries. The recent decision of the House of Lords in *Winter* v. *Cardiff R.D.C.* [1950] 1 All E.R. 819 has thrown some welcome light on these cases.

The appellant, Winter, was a labourer employed in a gang laying an electric cable. On completion of the work a heavy piece of apparatus—a voltage regulator—had to be loaded on to a lorry and returned to the depot. The lorry provided had no tail-board or near-side board, and the off-side board was unsupported. The foreman was entrusted with the job of loading the apparatus, but though he had a long rope to secure the apparatus to the vehicle, he did not use it. (The workman could not rely on the foreman's negligence, because the doctrine of common employment was still in force at the time of the accident.) During the journey to the depot, the regulator slid off as the lorry was taking a corner, and carried the appellant with it, whereby he sustained severe injuries.

The question for the House, therefore, was whether the respondents had negligently allowed an unsafe system by failing to give instructions that the regulator should be roped on to the lorry. The House held that there was no breach of duty and that the claim failed. Lord Oaksey, after referring to the duty to provide a safe system, said:

> " . . . but this does not mean that the employer must decide on every detail of the system of work or mode of operation. There is a sphere in which the employer must exercise his discretion and there are other spheres in which foremen and workmen must exercise theirs."

His lordship then went on to suggest a practical criterion:

> " . . . where the system or mode of operation is complicated or highly dangerous or prolonged or involves a number of men performing different functions, it is naturally a matter for the employer to take the responsibility of deciding what system shall be adopted. On the other hand, where the operation is simple and the decision how it shall be done has to be taken frequently, it is natural and reasonable that it should be left to the foremen or workmen on the spot."

Lord Reid pointed out that this was one of the unusual cases where a complaint is made about lack of system in doing an isolated task, as distinct from the general system of work in the undertaking. If such a complaint is to be substantiated, it is not enough to show that the task involved some danger; it must also be shown that there was something " of a complicated or unusual character " which called for special organisation.

It follows from these statements of the law that when an accident arises out of an everyday, routine operation, such as foremen or workmen are usually left to direct on their own initiative, a plea of defective system is likely to fail.

It is important to know what a case does not decide, as well as what it does decide. In *Winter's* case it was found as a fact that the equipment provided was suitable for the purpose in hand. In other cases, even on quite similar facts, it might be held that the equipment was not suitable, and if so, independently of system, the employer might be held liable for failing in his other duty, to provide safe plant.

J. H. M.

A Conveyancer's Diary

DETERMINATION OF INTERESTS LIMITED TO CEASE ON DEATH—I

A BRIEF explanation is due to those readers who may feel surprise on seeing this heading after having read the article on " Surrender of Life Interests " which appeared last week at p. 647, *supra*. I had written this article and mapped out those which will follow on this subject before I had had an opportunity of reading J.H.M.'s interesting article, and my first thought when I saw that the ground I intended to traverse had already been covered was to give up my original intention and to turn, not without relief, to some more tractable topic for this week's " Diary." But on second thoughts I decided to hold to my proposal. The precise effect of the recent changes made in the language of s. 43 of the Finance Act, 1940, it is extremely difficult to assess, but one thing seems to me to be pretty clear: while the intention behind some of these changes is evident, the question whether the language used for the purpose of translating that intention into fact has achieved its purpose is at the least open.

Some limitation will, I think, have to be put on the operation of some of the new provisions, but the difficulty will be to know where the line must be drawn. It will be some years, at least, before the House of Lords can have an opportunity of construing these provisions as they now stand, and before then I suppose the Estate Duty Office will adopt, and publicise, certain " practices " which will offer some guidance on this question, but in the meantime we shall have to rely on our own interpretation of the section, and on this particular problem perhaps my views, in supplementation of those of J.H.M., may not be entirely without value.

Section 43 is a most unattractive specimen of the parliamentary draftsman's forbidding art, full of strange expressions which it is difficult to understand, but dangerous to paraphrase, for like so many other provisions of the same kind it creates a charge to duty not in circumstances as they actually arise in ordinary life (if that is the word to use in speaking of death duties), but on certain hypotheses, and the hypothetical situations being purely artificial it is impossible to speak of them, without imprecision, in any language except that used by the draftsman. The first step towards any real appreciation of the effect of s. 43 must, therefore, lie in familiarising oneself with its language, and in this far from easy task some help can be derived from a consideration of the history of this section.

If property is settled upon A for life, with remainder to B, and nothing is done to break the settlement, then upon A's death there is a passing of the property comprised in the settlement within the meaning of s. 1 of the Finance Act, 1894, and estate duty is payable thereon on A's death (*Cowley* v. *Commissioners of Inland Revenue* [1899] A.C. 198). But it was held in *A.-G.* v. *De Preville* [1900] 1 Q.B. 223, that if A surrendered his life interest to B, estate duty was not payable on A's death, whether that took place before or after the commencement of the statutory period applicable in the case of gifts *inter vivos*, because there was no property left at A's death on which the charge could be fastened.

As a direct result of this decision s. 11 of the Finance Act, 1900, was passed, to provide that property in which the deceased or any other person had an interest limited to cease on the death of the deceased should be deemed to pass on his death, notwithstanding that that interest had been surrendered, assured, divested or otherwise disposed of, whether for value or not, to or for the benefit of any person

entitled to an interest in remainder in the property, unless (*a*) that surrender, assurance, divesting or disposition was *bona fide* made or effected twelve months before the deceased's death, and (*b*) *bona fide* possession and enjoyment of the property was assumed thereunder immediately upon the surrender, assurance, divesting or disposition, and thenceforward retained to the entire exclusion of the person who had the interest limited to cease on the death and of any benefit to him by contract or otherwise. Two points may be noted in connection with this provision. Firstly, the surrender, etc., had to be a surrender to or for the benefit of the remainderman in order to come within the provision, a requirement which does not appear in s. 43, which has replaced s. 11 of the 1900 Act. Secondly, the exception made in favour of surrenders, etc., made at least twelve months before the deceased's death (a period subsequently extended to three, and lately to five years) is subject to the same qualification as to *bona fide* possession being assumed by the person in whose favour the surrender is made, etc., as operates in the case of gifts *inter vivos* made more than five years (the period now prescribed) before the death. The language of s. 11 of the 1900 Act in this respect, as also of s. 43, follows that of s. 11 (1) of the Customs and Inland Revenue Act, 1889, which was incorporated by reference in the estate duty legislation, in order to bring such gifts within the charge to estate duty, by s. 2 (1) (*c*) of the Finance Act, 1894. The effect of this exception is simple: to qualify for it, a surrender, etc., as in the similar case of a gift *inter vivos*, must be made (*a*) before the commencement of the statutory period, and (*b*) without reservation of any benefit, by contract or otherwise, to the deceased.

Section 11 of the 1900 Act was superseded by s. 43 of the Act of 1940. This in its original form provided (by subs. (1)) that where an interest limited to cease on a death has been disposed of or has determined, whether by surrender, assurance, divesting, forfeiture or in any other manner (except by the expiration of a fixed period at the expiration of which the interest was limited to cease), whether wholly or partly, and whether for value or not, after becoming an interest in possession, then if apart from the disposition or determination the property in which the interest subsisted would have passed on the death, that property is deemed to be included as to the whole thereof in the property passing on the death. Subsection (1) also provided that in the case of property which, in similar circumstances, would apart from the disposition or determination have been deemed by virtue of s. 2 (1) (*b*) of the Act of 1894 to be included to the extent to which a benefit arises by the cesser of the interest, the property in which the interest subsisted is deemed to be included in the property passing on the death to that extent. Subsection (2) of the section, in its original form, contained an exception, in terms very similar to those employed in s. 11 of the 1900 Act, excepting from the operation of subs. (1) any interest disposed of or determined within the meaning of subs. (1) if the disposition or determination (*a*) was *bona fide* effected or suffered three (later amended to five) years before the death (one year in the case of dispositions for public or charitable purposes), and (*b*) *bona fide* possession of the property was immediately assumed by the person becoming entitled, etc. Special provision is made for applying this exception to cases of partial determination.

It will be seen that several changes were made when s. 43 superseded the earlier provision. (1) Section 43 only applies to dispositions and determinations of interests limited to cease on death effected or suffered after the interest in question has become an interest in possession: the surrender of, or any other dealing with, such interests while still in remainder, are outside the section. (2) The earlier section operated upon a surrender, assurance, divesting or other disposition, but this already extensive list of transactions was evidently considered insufficient, and s. 43 operates upon a disposition or determination of the relevant interest. "Determination" is explained in subs. (1) itself to mean "determination whether by surrender, assurance, divesting, forfeiture or in any other manner," and "disposition" is defined by s. 59 to include "any trust, covenant, agreement or arrangement, whether made by a single operation or by associated operations." This definition will become very material when s. 43 (2) of the Act of 1950 has to be considered, but the wide range of transactions which fall within s. 43 as a result of these definitions must constantly be borne in mind (an advancement made under a power of advancement, for example, falls within the definition), as should also the provision that the section applies whether the particular transaction was effected for value or not, unless it can be brought within the scope of the general exception in favour of dispositions effected more than five years before the death of the deceased.

One final point on the old s. 43: the interests with the disposition or determination of which the section is concerned are interests limited to cease on a death, but an express exception is made in the case of interests which determine by the expiration of a fixed period, at the expiration of which the interest was limited to cease. The only interests which fulfil the dual requirement of being interests limited to cease on a death and also interests which determine at the expiration of a fixed period are interests limited to a person for a specified number of years if that person should so long live. If an interest of this kind determines by the effluxion of time during the period of five years before the death of the person to whom it was limited, estate duty is not payable on the property in which the interest subsisted on that death; if on the other hand the beneficiary dies before the expiration of the specified period, s. 43 has no application since, quite apart from that section, a charge to estate duty will arise.

"A B C"

OBITUARY

Sir JOHN CRISP

Sir John Wilson Crisp, Bt., solicitor, of Throgmorton Avenue, E.C.2, died on 11th October. He was admitted in 1906.

Mr. F. M. HORNER

Mr. Francis Mariner Horner, solicitor, of Bradford, died on 11th October, aged 73. He was admitted in 1901.

Sir CYRIL LANGHAM

Sir Cyril Langham, formerly solicitor to the Ministry of Labour and National Service, died on 11th October. He was admitted in 1907 and was with the Ministry from 1924 until his retirement in 1949, when he was knighted.

Lt.-Col. C. R. I. NICHOLL

Lt.-Col. Charles Rice Iltyd Nicholl, T.D., solicitor, of Howard Street, Strand, died on 9th October, aged 70. Admitted in 1907, he gave much of his time to the Law Association and the Solicitors' Benevolent Association.

Sir RALEGH BULLER PHILLPOTTS

Sir Ralegh Buller Phillpotts, Joint Chairman of Devon Quarter Sessions from 1934 to 1938 and Deputy Chairman from 1938 to 1944, died on 1st October, aged 78. He was called to the Bar by Lincoln's Inn in 1894 and admitted a solicitor in 1907. He retired from practice in 1920 and was knighted in 1946.

Landlord and Tenant Notebook

CONTROL AND JOINT TENANT GRANTEES

"AND happy problems await solution where, instead of there being a sole tenant, the tenancy is vested in two or more persons, one of whom dies," runs a sentence in Megarry's "The Rent Acts." The passage occurs in that part of the work that deals with statutory tenancy in general, with alienation of statutory tenancy in particular, and with transmission on death more particularly. What is under discussion is the provision of s. 12 (1) (*g*) of the Increase of Rent, etc., Restrictions Act, 1920, by which, for the purposes of that Act, the expression "tenant" includes the widow of a tenant, etc., or where a tenant leaves no widow, etc., such member of the tenant's family, etc., as may be decided in default of agreement by the county court. A footnote to the passage refers the reader to an observation made by Tucker, L.J., in *McIntyre* v. *Hardcastle* [1948] 2 K.B. 82, at p. 90: "I do not think that the Legislature contemplated this situation at all," which, while it concerned (as is pointed out) a case of joint tenant landlords requiring possession of controlled premises as a residence for one of them (para. (*h*) of Sched. I to the Rent, etc., Restrictions (Amendment) Act, 1933), certainly seems to apply with equal force to the situation visualised.

Disclaiming any killjoy intentions (apportionment of the prospective happiness would, it seems likely, reveal something like a *leonina societas*), I propose to go into the question raised by the passage.

It is, of course, a truism that every statutory tenancy is the creature of a contractual tenancy; a statutory tenant is one who retains possession by virtue of the provisions of the Acts (1920 Act, s. 15 (1)). So it may be pertinent to start with the question whether the Acts apply to joint tenancies at all. I think they do; a house (or part of a house) may be let as a separate dwelling to two (or more) persons as joint tenants, i.e., as a separate dwelling for both (or all) of them. Such cases may be rarer than cases in which joint tenants are or find themselves in the position of landlords, but they have been met; landlords who grant joint tenancies may be induced to do so by the attraction of joint liability (for a recent illustration, see *Cunningham-Reid* v. *Public Trustee* [1944] K.B. 602 (C.A.)). Such tenants will not normally take any steps to convert the equitable joint tenancy into an equitable tenancy in common or do anything else to enhance or mar the happiness of the prospective problem, and I will assume that when their tenancy comes to an end (if the landlord effects this determination by notice to quit, it is advisable, but perhaps not necessary, to serve all: *Doe d. Macartney* v. *Crick* (1805), 5 Esp. 196) at least two joint tenants are alive and resident in the demised premises and manifest no intention of leaving.

The next point to consider, then, is whether those retaining possession are entitled to retain possession. This involves an examination of two things: of the nature of a joint tenancy, and of the *modus operandi*, as regards security of tenure, of the Rent Acts.

One of the two main characteristics of a joint tenancy is unity of title. So up to the moment when the contract of tenancy expired, at all events, each was possessed of the whole estate.

That estate then ceased to exist; but "no order or judgment for the recovery of possession of any dwelling-house to which the principal Acts apply or for the ejectment of a tenant therefrom shall be made unless . . ." (Rent, etc., Restrictions (Amendment) Act, 1933, s. 3 (1)) and, while the situation may not have been contemplated, the result is that a court could be expected to take the same course as that taken by Tucker, L.J., in *McIntyre* v. *Hardcastle*, *supra*. He, after expressing himself as stated, proceeded: ". . . and, therefore, I feel driven to interpret it merely in the light of the actual language used." In the absence of evidence that conditions which follow the "unless" have been fulfilled, it does not seem possible that the landlord would be able to recover possession against any or all of the ex-joint tenants, and at this stage it does not matter whether each has a statutory tenancy or whether they have one such tenancy between them.

But that question threatens to assume dimensions of importance when one of them dies. There can, of course, be no question of survivorship, the other main characteristic of a joint tenancy, playing any part; for one thing because there is no longer any such estate, for another because the interest of a statutory tenant does not devolve by death, except in the circumstances set out in s. 12 (1) (*g*) of the 1920 Act, mentioned in my opening paragraph. And it does not appear that anything has happened which will entitle any court to make an order against the survivor, who is simply a tenant retaining possession by virtue of the Acts.

In most cases, it seems likely that the tenants will be a married couple but, where this is not the case, something more like a problem does arise if the survivor should leave a family. In *Thynne* v. *Salmon* [1948] 1 K.B. 482 (C.A.), the Court of Appeal (Bucknill, L.J., dissenting) decided that a statutory and contractual tenancy could not co-exist, interpreting the above-mentioned para. (*g*) as applicable to statutory tenants only. But it did not hold or indicate that there might not be two or more statutory tenancies of the same dwelling-house running together at the same time and, curious though this result may be, it seems to me to be the only possible solution of the problem. The actual language used by the Act gives each statutory tenant a right of exclusive possession against the landlord. When it comes to their rights *inter se*, I can only suggest that though there is no legal estate in land, a court would have to reason by analogy and hold that the relationship would be governed by the same rules as those applicable in the case of a joint tenancy: the same size of interest, the same possession, the same title; and only actual ouster or destruction of subject-matter giving either a cause of action against the other.

R. B.

Mr. G. T. JONES, clerk to Caernarvonshire County Council, has been appointed clerk to the Gwynedd Police Authority.

Mr. ERNEST MEAD has succeeded to the office of clerk to the Kensington Justices on the retirement of Mr. S. G. Carnt.

Mr. I. L. THOMAS has been appointed assistant solicitor to Wrexham Rural District Council.

On behalf of the solicitors practising in Lincoln County Court, a wallet containing a sum of money was presented to Mr. Jonathan Taylor, who has retired after sixteen years as bailiff. Judge Ralph Shove also presented Mr. Taylor with a silver tea service on behalf of the judge, registrar and staff of the Lincoln County Court group and the chief clerk of the Lincoln and District Probate Registry.

HERE AND THERE

PENAL PIONEERS

Two or three years before the war, you may remember, a banker doing a term in a Paris prison for divers financial irregularities made a picturesque and sensational gaol-break. If M. René Clair had invented a gaol-break for one of his more farcical French films it might very well have followed the same formula. The humane and enlightened officer in charge of the material section of the prison was without a doubt temperamentally a pioneer in penal reform, though (as events proved) perhaps a little weak in his criminal psychiatry. Cell No. 10 within his jurisdiction, which as a result of the evidence in the case attained a just celebrity in France, was apparently without a tenant. The understanding gaoler kept it comfortably furnished with a couch, a wash-stand and six chairs and there, without fee or reward, he was accustomed to allow his charges to have prolonged private conferences with their wives or other lady visitors. The delinquent banker's wife conferred with him there to such good purpose that one day before their time had elapsed he got clear away out of the prison altogether, leaving his wife with a note of explanation for their considerate host. He would be back by five, said the note. He had slipped out to the Crédit Lyonnais, said the wife. Alas, he did not return at five and he had not gone to the bank. In the sequel his wife and his cousin and the prison officer found themselves in the dock charged with aiding and abetting his escape. An American friend who lives in France because he prefers it to the States says that France is the embodiment of organised anarchy; he likes it very much and I think I see what he means.

AMOR VINCIT OMNIA

I WAS reminded of the good gaoler's enlightened, if ill-rewarded, experiment the other day by a news item which suggested that what I suppose is called "the best contemporary thought" is just beginning to catch up with him. Stoning the prophets is ancient news, and I trust that it was found possible to contact him when the penitentiary section of the International Crime Conference, meeting in Paris recently, reported that lack of contact with the opposite sex "may be an important factor in encouraging a prisoner to continue a life of crime after he leaves prison." Without seeming to carp, one might hazard the guess that that depended rather on the nature and quality of the member of the opposite sex with whom he was likely to have contact. Anyhow, it appears that certain go-ahead countries like Argentina, Venezuela and Cuba, adopting a "modern attitude" to the problem, equip a "special room" in every prison where prisoners with good conduct records may entertain their wives "for one night only and at very long intervals." Sometimes, it seems, the term "wife" is extended for prison regulation purposes to cover a broader relationship. And the contribution to penal science? "The results of such concessions," says the report, "have been astounding. The system has led to a marked improvement in the conduct of the prisoners and it appears they are strengthened in their fight to turn from a life of crime." Can one call it the old, old faith in the influence of a good woman, with a difference? It always delights me to see "the best contemporary thought" teaching its great-great-grandmother to suck eggs. To a great extent the modern reaction against the harsh inhumanity of nineteenth-century prison methods, which incidentally in their day were also backed by "the best contemporary thought," is a harking back to the more human values of an even earlier time. Did you ever hear of Major Bernardi, for instance? He was kept in Newgate (untried, incidentally) for forty years on suspicion of having been involved in a plot against William III. After sixteen years he married a lady who bore him ten children in his captivity.

WEARING OF THE LINCOLN GREEN

TALKING of gaol-breaks, I see that Mr. De Valera was lately allowed to revisit, in the capacity of an "old boy," Lincoln Gaol, from which he made a remarkable escape in 1919 during "the troubles." His belligerent exploits had brought him within measurable distance of a firing squad, and his somewhat improbable companion on his late nostalgic pilgrimage was a present member of Parliament who, at the same remote period, matriculated to the same establishment by way of conscientious objection to military service. All escape stories from "The Wooden Horse" backward have the quality of fact improving upon fiction. So has Dev's. It is a richly compounded recipe, including the smuggled impression of a key (some say in soap, some in candle-grease), the replica returned in a cake, two pretty girls to decoy the guards, and an Irish gardener singing escape instructions, Blondel-fashion, under his window, in Erse. Could any fiction writer get away with it on paper? I doubt it.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Cancellation of Holiday Booking

Sir,—Your contributor G. H. C. V. has, if I may respectfully say so, accurately set up (*ante*, p. 632) the balances in which the merits at law of a dispute over a "cancelled" booking of holiday accommodation are to be weighed. But when he brings to his scales the particular prevalent case of a cancellation on the grounds of the recent poliomyelitis scare in the Isle of Wight has he not given his weighing machine a surreptitious and crippling side-kick?

According to the words of Lord Wright in the *Constantine* case, quoted in your contributor's article, the court has to decide what the parties (note the plural) as reasonable *men* should have intended. Does it wholly answer the question which the court would have to consider in an "Isle of Wight case" to say that no reasonable man would take his wife and children there when people were falling ill of a serious disease there in no inconsiderable numbers? Is it not equally to the point to observe that no hotel proprietor could reasonably be expected to accept a booking subject to the condition that it should be cancelled if the prospective guest should take alarm from Press reports of local infection? In the event many Isle of Wight landlords did not agree that any special danger was courted merely by visiting the island. It would, of course, be different in a case where the infection was known to be present in the very establishment where the accommodation was to be provided.

I suggest that your contributor has imagined the "officious bystander" (see *per* MacKinnon, L.J., in *Shirlaw* v. *Southern Foundries* (1926), *Ltd.* [1939] 2 K.B. 206) addressing his suggestion to one party only—the prospective guest. If the term propounded by that legendary meddler is in fact to be implied in the contract, he must be taken to have made himself heard by both parties, and to have been suppressed by both sides with equal firmness.

J. F. JOSLING.

Loughton,
Essex.

G. H. C. V. writes: "I cannot accept your correspondent's implication that I took the view that the 'Isle of Wight' contracts *would* be frustrated by the infantile paralysis outbreak. I reviewed all the cases in which an implied term had enabled the courts to regard a contract as frustrated, and

I contented myself, as indeed I had to, with saying that the courts *might* see fit to extend the 'doctrine of the implied term.' Your learned correspondent does not think that any reasonable hotel proprietor would consent to a term that a 'Press scare' of infantile paralysis should dissolve the contract. Of course not, still less would a court imply such a term. The court would ascertain the degree of infection and the state of public reaction to reports of the disease and, in view of the fact that it is unknown how it is transmitted and the authorities have prohibited bathing in river and public bath in areas where it was known to be, I venture to suggest that infection of the very hotel concerned would not necessarily be essential. The whole of the bathing beaches would be under suspicion."

BOOKS RECEIVED

Van Oss and MacDermot on the Lands Tribunal. Supplement by NIALL MACDERMOT, of the Inner Temple, Barrister-at-Law. 1950. pp. viii and 34. London: Butterworth & Co. (Publishers), Ltd. 5s. net.

Prideaux's Forms and Precedents in Conveyancing. Supplement to Vol. 1, Twenty-fourth Edition. By J. BROOK RICHARDSON, M.A., LL.B., of the Middle Temple and Lincoln's Inn, Barrister-at-Law. 1950. pp. 20. London: Stevens & Sons, Ltd.; The Solicitors' Law Stationery Society, Ltd.

Levie on the Law of Bankruptcy in Scotland. Fourth Edition. By ANDREW RANKIN, B.A., B.L., of Gray's Inn and the Northern Circuit, Barrister-at-Law. 1950. pp. (with Index) 160. London: William Hodge & Co., Ltd. 12s. 6d. net.

A Digest of the Criminal Law (Indictable Offences). By the late Sir JAMES FITZJAMES STEPHEN, Bart., K.C.S.I., D.C.L., one of the Judges of the High Court. Ninth Edition by LEWIS FREDERICK STURGE, of the Inner and Middle Temples and the Midland Circuit, Barrister-at-Law. 1950. pp. xlvii and (with Index) 580. London: Sweet & Maxwell, Ltd. 45s. net.

Short Tables of Simple Interest and Table for Repayment of Loans. 1950. London: Sweet & Maxwell, Ltd. 5s. net.

Archbold's Criminal Pleading, Evidence and Practice. Third Cumulative Supplement to the Thirty-second Edition. Edited by T. R. FITZWALTER BUTLER, Barrister-at-Law, and MARSTON GARSIA, Barrister-at-Law. 1950. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd.

The Child and the Magistrate. By JOHN A. F. WATSON, Chairman of the South-East London Juvenile Court. 1950. pp. (with Index) 367. London: Jonathan Cape, Ltd. 12s. 6d. net.

Underhill's Law relating to Trusts and Trustees. Tenth Edition. By C. MONTGOMERY WHITE, K.C., of Lincoln's Inn, Barrister-at-Law, and M. M. WELLS, of Gray's Inn, Barrister-at-Law. 1950. pp. cxlvii, 593 and (Index) 57. London: Butterworth and Co. (Publishers), Ltd. 75s. net.

The Velpke Baby Home Trial. War Crimes Trials Series, Vol. 7. Edited by GEORGE BRAND, LL.B. With a Foreword by Professor H. LAUTERPACHT, K.C., LL.D., F.B.A., Whewell Professor of International Law in the University of Cambridge. 1950. pp. liv and (with Index) 356. London: William Hodge & Co., Ltd. 18s. net.

The Shaftesbury Papers. No. 1. The Need for Balance in Christian Service, by G. W. OXER. 1950. London: The Shaftesbury Society. 6d. net.

Probate and Estate Duty Practice. By the late EDGAR A. PHILLIPS, O.B.E., LL.B. Second (Cumulative) Supplement to the Fourth Edition. 1950. pp. 77. London: The Solicitors' Law Stationery Society, Ltd. 5s. net.

The Assignment of Choses in Action. By O. R. MARSHALL, M.A. (Cantab.), Ph.D. (Lond.), of the Inner Temple, Barrister-at-Law, Sub-Dean of the Faculty of Laws and Lecturer in Law at University College, London. 1950. pp. xxiv and (with Index) 216. London: Sir Isaac Pitman & Sons, Ltd. 30s. net.

SOCIETIES

The autumn meeting of the CHESTER AND NORTH WALES INCORPORATED LAW SOCIETY was held in the Council Chamber, Llandudno, on 5th October, 1950, the President, Mr. J. E. Hallmark, of Llandudno, presiding. Thirty members were present.

A testimonial, in the form of a cheque, was presented to Mr. G. Osborne Williams, retiring Chief Clerk of the Bangor and St. Asaph District Probate Registries. Subjects discussed included the Society's effective area of operation, the Legal Aid Scheme and the proposed new rules for minimum charges in conveyancing matters. A resolution was passed urging The Law Society to put forward a scale of minimum charges for use throughout the country, in view of difficulties encountered in undercutting from outside the Society's area. The Chairman of the Area Committee for No. 12 Legal Aid Area reported that so far 68 per cent. of the solicitors practising in North Wales and 57 per cent. of those practising in the parts of Cheshire in No. 12 Area had joined the panels under the Legal Aid Scheme and that these figures were well above the average throughout the country.

At the October court meeting of the WORSHIPFUL COMPANY OF SOLICITORS OF THE CITY OF LONDON, Mr. G. A. R. Richardson and Mr. C. J. J. Berry were admitted to the Livery and Mr. A. W. Letts and Mr. P. H. North Lewis were admitted to the Freedom of the Company. The meeting was followed by a court dinner at which members of the Livery were entertained as guests of the members of the court.

The SOLICITORS' MANAGING CLERKS' ASSOCIATION announce that Mr. Geoffrey H. Crispin, barrister-at-law, will deliver a lecture on "Mandamus, Certiorari and Prohibition" on Wednesday, 25th October, 1950, in the Middle Temple Hall, Temple, E.C.4. The chair will be taken by The Hon. Mr. Justice Collingwood at 6.15 p.m. Tickets are available at the offices of the Association, Maltravers House, Arundel Street, Strand, W.C.2.

At a meeting of the UNITED LAW SOCIETY in the Gray's Inn Common Room on Monday, 2nd October, the Society debated that "This House would rather have written 'June is bustin' out all over' than the 'Emperor' Concerto." The motion was proposed by Mr. O. T. Hill, who read the words of the song and then proceeded to suggest that it were better to write such popular music to make many happy and oneself rich than to be poor, appeal to fewer people and write music like the "Emperor" concerto. He also contrasted the lives of Beethoven and Rogers and Hammerstein ii. The motion was opposed by Mr. A. D. N. Jones, who criticised the coarse music of "June is bustin' out all over" and suggested that it would not live 150 years as the concerto had done. He felt that to serve art and beauty was a finer thing than to pander to depraved tastes for popularity at the expense of quality. The motion was lost by seven votes in a house of twenty-four.

The Society announce the following debates: Monday, 23rd October, "This House approves of the dissenting judgment of Denning, L.J., in *Rice* v. *Capital and Provincial Property Trust, Ltd.* [1950] 2 All E.R. 174." Monday, 30th October, "This House disapproves of co-education."

An ordinary meeting of the MEDICO-LEGAL SOCIETY will be held at Manson House, 26 Portland Place, W.1 (Tel. Langham 2127), on Thursday, 26th October, 1950, at 8.15 p.m., when a paper will be read by Rt. Hon. Sir Travers Humphreys on "Doctors and the Law."

The University of London announce a special university lecture in laws on "Conflict of Western and Non-Western Laws" by Professor R. D. Kollewijn, Professor of Colonial Laws, University of Leiden, at the School of Oriental and African Studies, University of London, W.C.1, at 5.30 p.m. on Friday, 17th November, 1950. The chair will be taken by Professor S. G. Vesey-Fitzgerald, K.C., LL.D., Dean of the Faculty of Laws in the University of London. The lecture is addressed to students of the university and to others interested in the subject. Admission is free, without ticket.

NOTES OF CASES

COURT OF APPEAL

POOR PERSON: TRANSITION TO NEW PROCEDURE

Freedman *v.* Freedman

Somervell, Cohen and Denning, L.JJ.
3rd October, 1950

Motion.

The applicant wished to appeal from the grant to her husband on 31st July, 1950, of a decree *nisi* for desertion. She was then a poor person. By R.S.C., Ord. 16, r. 31E and r. 31F, she had, as a poor person, to obtain leave to appeal from the trial judge or the Court of Appeal. She obtained from the committee a certificate that she had reasonable grounds for applying for leave to appeal to the Court of Appeal and, if leave were granted, to prosecute the appeal. On 7th September, 1950, she applied for leave to appeal before the vacation judge, Barry, J. He adjourned the application for consideration, but extended the time for appealing to 5th October, 1950. On 21st September, he refused leave to appeal. On 2nd October, the Legal Aid and Advice Act, 1949, came into force. By s. 17 (3): " No person shall after the coming into force of this sub-section be admitted in any court . . . to . . . be a party to any proceedings . . . as a poor person, and accordingly" R.S.C., Ord. 16, rr. 22 to 31H, among other enactments, were repealed. The present application was for an order, if necessary, granting the wife leave to renew out of time her application previously made to Barry, J., and that she should have leave to appeal to the Court of Appeal from the judgment granting the decree *nisi*, and then for an order extending the time for appeal.

SOMERVELL, L.J., said that the position on 2nd October, when the new Act of 1949 came into force, was that the rule which made it necessary for the wife to get leave to appeal had been repealed. It was no longer necessary for her to ask for leave as a poor person. As extension of time to 5th October for appealing had been granted by Barry, J., unconditionally, and as no leave was necessary under the Legal Aid and Advice Act, 1949, there was no obstacle that he could see in the way of the wife's setting down her notice of appeal. By r. 20 (4) of the Legal Aid (General) Regulations, 1950, the poor persons' certificate issued to the wife was to be deemed to have become a certificate issued under those regulations. She had an effective certificate under the new code for the conduct of the appeal. The wife required no further order from the Court of Appeal to prosecute her appeal. It had been most desirable, in the interests of both parties, that the position should be clarified and confirmed by the court. Motion dismissed.

APPEARANCES: *J. A. Petrie* (*Parry Jones, Law Society Services Divorce Department*); *Aiken Watson*, K.C., and *M. Finer* (*Edward Thompson & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

INCOME TAX: CHILD ALLOWANCES

Yates *v.* Starkey

Vaisey, J. 18th July, 1950

Case stated by Kent Commissioners for the General Purposes of the Income Tax Acts.

The respondent taxpayer's wife was granted a decree *nisi* against him, with custody of their children. He was ordered to pay his former wife " from the date of the decree absolute " £100 a year " less tax, in trust for each of the three children . . . the respondent to claim child allowances . . . " The taxpayer appealed against his income tax coding, contending that the court had no power under ss. 190 and 193 of the Supreme Court of Judicature (Consolidation) Act, 1925, as amended by s. 10 (4) of the Matrimonial Causes Act, 1937, to create a trust in favour of the children, so that no trust was created; that the children had therefore no income of their own, and he was entitled to claim allowances under s. 21 of the Finance Act, 1920, as amended by s. 24 of the Finance Act, 1940; alternatively that, if a trust had been created, the sums payable under it ought, by virtue of s. 21 of the Finance Act, 1936, to be treated as his income. The General Commissioners held that the order created a trust in favour of the three children, but that, under s. 21 of the Act of 1936, the income of each child under the trust must for income tax purposes be treated as that of the taxpayer, who was entitled to claim the child allowances. The Crown appealed.

VAISEY, J., said that the first question was whether it was within the power of the court under s. 193 (3) of the Judicature Act, 1925, to make provision for the children in the form of a trust. He felt no doubt that the order made here was one within the competence of the court, that no exception could be taken to it in substance or in form, and that it operated to create a trust in favour of each of the three children. *Stevens* v. *Tirard* [1940] 1 K.B. 204 was, in his opinion, of little assistance. With regard to s. 21 of the Finance Act, 1936, and the taxpayer's claim that the annual sums paid under it ought to be treated as his income, he thought that the order created a trust in consequence of which the £100 a year was paid to or for the benefit of the children; and the trust was therefore a " settlement " within the meaning of s. 21. He felt some hesitation about the final question, however, whether the taxpayer was a " settlor." *Hood Barrs* v. *Inland Revenue Commissioners* (1946), 27 T.C. 385, had been cited in support of the view that he was. He had been much impressed with the argument that a settlor must necessarily be a person who acted voluntarily and of his own volition; but on the whole it seemed to him that the taxpayer was a person by whom a trust was indirectly created, and not the less so because it was done under the compulsion of an order of the court. He therefore came within the definition of " settlor " in s. 21, and the section accordingly applied. The point was doubtful, but he thought that the commissioners were right. Appeal dismissed.

APPEARANCES: *Gerald Upjohn*, K.C., *J. H. Stamp* and *R. P. Hills* (*Solicitor of Inland Revenue*); *John Clements* (*James Turner & Sons*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

INCOME TAX: WALL ERECTED AGAINST EROSION

Avon Beach & Café, Ltd. *v.* Stewart

Vaisey, J. 18th July, 1950

Case stated by New Forest West Division Commissioners for the General Purposes of the Income Tax Acts.

The appellant company owned land adjoining the foreshore, and carried on there the business of restaurant proprietors. On the land were the café, lock-up seaside bungalows, and a car park, for use of which a charge was made. In the year 1947–48 the company spent £500 in the erection of a barrier of wood piles and brushwood in front of the café in order to protect their property from the erosion of the sea. The company claimed to be allowed to deduct the £500 in computing their profits for income-tax purposes, contending that that expenditure had been incurred solely in order to maintain their existing assets in their original state when bought, and that no new asset had been created by the expenditure, which, they further said, had been wholly and exclusively incurred for the purposes of their trade (Income Tax Act, 1918, Sched. D, Cases I and II rules, r. 3). The Crown contended, among other things, that a new asset, in the shape of the sea wall, had been created; that the £500 was capital expenditure on improvement to the property, and that it was not allowable as a deduction (r. 3 (*g*)). The commissioners disallowed the deduction, and the company appealed.

VAISEY, J., said that it seemed plain that here there was a new construction, resulting in a new tangible erection or structure. Before the operation was carried out, the land, where it touched the sea, was, no doubt, just ordinary ground which was continually being eroded. The company had really built up, between the land and the sea, a new sea wall. True, it was not a wall of concrete or brick; but none the less it was a solid structure erected so as to intervene for the first time between land and water in order that the land might not be further encroached upon by the sea. Apart from authority, he would have thought that this was essentially a capital expenditure. One of the tests was undoubtedly whether the expenditure had produced a new tangible asset. He thought that here it had: there had not been merely the replacement of an existing barrier by a new and more up-to-date one, but the creation and insertion of a new barrier. It was not merely some act done to preserve the existing asset of the land. The expenditure was of a capital sum and for a capital purpose. The commissioners had so found, and there was no ground on which their finding could be disturbed. The accounting principles on which such cases should be considered were laid down by Lord Clyde in *Lothian Chemical Co., Ltd.* v. *Commissioners of Inland Revenue* (1926), 11 T.C. 508, at p. 520. Reference might also be made to *O'Grady* v. *Markham Main Colliery, Ltd.* (1932), 17 T.C. 93, and *Southern* v. *Borax Consolidated, Ltd.* [1941] 1 K.B. 111. The appeal failed. Appeal dismissed.

APPEARANCES: *G. G. Honeyman* (*Eric Fullbrook & Co.*); *J. Millard Tucker*, K.C., and *R. P. Hills* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

INCOME TAX: DEDUCTIONS: COMPANY'S PAYMENTS FOR WORKERS' BENEFIT

Hutchinson & Co. (Publishers), Ltd. *v.* Turner

Vaisey, J. 20th July, 1950

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

The appellants, a publishing company, printed, produced and sold certain publications, collectively referred to as *Printers' Pie*, and paid the annual profits arising from the sale of them to a charitable corporation established for the benefit of persons employed in the business of publishers and printers. There was no written agreement between the company and the corporation, but there was an understanding that the profits would be handed over to the corporation. The commissioners held that a sum of £31,469, representing profits from the sale of *Printers' Pie*, was part of the company's profits and assessable to income tax for the year 1944–45. Secondly, they held that the company were not entitled to deduct for the purpose of their assessment to tax £6,972, representing life subscriptions paid to the corporation by the company on behalf of certain of their employees. By these payments 1,468 employees were made life members of the corporation's pension fund at a single payment subscription of four guineas each, and 384 employees were made life members of the orphan fund at a similar payment of two guineas each. The company appealed. (*Cur. adv. vult.*)

VAISEY, J., said that in his opinion the £31,469 must be treated as part of the company's profits since there was no contract binding them to pay that sum to the corporation, and a mere moral obligation was not sufficient, however certain of fulfilment. He also rejected the argument that the £31,469 should be regarded as an outgoing of the company's business because of the damage to their reputation should they fail to pay it over. With regard to the £6,972, the resulting advance of the company's employees' rights to pensions as against the employees of rival publishing companies was a certain advantage to the company. Also the payments might be regarded as bonuses, if small, to employees. He was, however, unable to regard them as moneys wholly and exclusively laid out for the purposes of the company's business; and to allow them as deductions would, he thought, be contrary to r. 3 (*a*), and possibly also (*f*), of the Cases I and II rules of Sched. D to the Income Tax Act, 1918. *British Insulated & Helsby Cables, Ltd.* v. *Atherton* [1926] A.C. 205, particularly the speech of Lord Cave, supported his view. The commissioners had decided rightly on both points. Appeal dismissed.

APPEARANCES: *Sir Andrew Clark*, K.C., and *L. C. Graham-Dixon*, K.C. (*Rubenstein, Nash & Co.*); *J. Pennycuick*, K.C., and *R. P. Hills* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

POWER OF ADVANCEMENT: WILL MADE BEFORE COMMENCEMENT OF TRUSTEE ACT, 1925: CODICIL AND DEATH OF TESTATOR THEREAFTER

***In re* Taylor's Will Trusts; Public Trustee *v.* Burge**

Wynn Parry, J. 26th July, 1950

Adjourned summons.

By his will made on 1st April, 1924, the testator gave a life annuity to the first defendant, with remainder over in equal shares to her children living at the death of the survivor of the first defendant and the testator, who should attain twenty-one or, being female, should marry, with further gifts over on certain contingencies. By a codicil of 7th June, 1926, the testator increased the annuity and otherwise confirmed the will; he died in 1929. The first defendant asked the trustee to apply part of the settled capital for the advancement of her infant children, further defendants, for the purposes of their education and maintenance, in pursuance of the Trustee Act, 1925, s. 32. The trustee, the plaintiff, was prepared to do so provided he had the statutory power of advancement, in view of subs. (3) of the section, which provides that "this section does not apply to trusts constituted or created before the commencement of this Act."

WYNN PARRY, J., said that when subs. (3) of s. 32 was considered in the light of the reasoning of the majority of the House of Lords in *Berkeley* v. *Berkeley* [1946] A.C. 555, the true conclusion was that the trusts therein directed were not constituted until the will took effect, nor until the testator's death, which was after the commencement of the Act. Even if that conclusion was not right, there was no ground for excluding the general rule, that the confirmation of a will in a number of codicils, the material ones being dated after the coming into force of the Act, had the effect of bringing the will within the ambit of subs. (3). For these reasons the trustee possessed the statutory power of advancement. Declaration accordingly.

APPEARANCES: *Wilfrid M. Hunt*, *O'C. Stranders*, *Lord Mancroft* (*Richardson Sowerby, Holden & Co.*, for *Winder and Holden, Bolton*); *G. M. Parbury* (*Vincent & Vincent*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

CHARITABLE PURPOSES: PROMOTION OF INDUSTRY, COMMERCE AND ART: CRYSTAL PALACE

Crystal Palace Trustees *v.* Minister of Town and Country Planning

Danckwerts, J. 6th October, 1950

Adjourned summons.

The Crystal Palace Act, 1914, a private Act, provides in s. 14 that the trustees of the Crystal Palace shall have the entire control and management of the palace and the park "as a place for education and recreation and for the promotion of industry, commerce and art." The trustees had always been regarded as exempt from income tax under s. 37 of the Income Tax Act, 1918, on the ground that they were trustees of a trust established for charitable purposes only. In an application under s. 85 of the Town and Country Planning Act, 1947, the Minister decided that the land in question was

not held "on charitable trusts or for . . . other charitable purposes of any description" because the promotion of industry and commerce was outside the scope of charitable trusts and purposes. The trustees appealed to the courts in pursuance of s. 92 (2) of the Act of 1947.

DANCKWERTS, J., said that he was entitled where the terms of the trusts were not clear to have regard to the surrounding circumstances, including the nature of the trustees. By the Crystal Palace Act, 1914, the body of trustees constituted by the Act was to a large extent representatives of public authorities who contributed to the money required for the acquisition of the property to be administered by the trustees as a concern which would not distribute any profits. Throughout the Act the note which was stressed was the provision of benefits to the public. The inclusion in s. 14 of the promotion of industry and commerce was for the benefit of the public; it was a public purpose of a charitable nature within the fourth class in *Pemsel's* case [1891] A.C. 531, 583, and the conclusion of the Minister that it was not charitable was wrong. It was also argued that the inclusion of the promotion of arts in the purposes of the trust was outside the scope of charitable trusts or purposes, but he (the learned judge) found no difficulty in holding that that contention was not correct.

APPEARANCES: *Charles Russell*, K.C., and *Wilfrid M. Hunt* (*John Holmes, Son and Patteson*); *Denys Buckley* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

WRONGFUL DISMISSAL: REASONABLE NOTICE

Mulholland *v.* Bexwell Estates Co., Ltd., and Others

Parker, J. 25th July, 1950

Action.

The defendants were three companies carrying on the businesses, respectively, of estate agents (first defendants), builders' merchants and builders. On 23rd January, 1950, the managing director of all three companies, by a letter, appointed the plaintiff to be general manager of the three companies. He was given "full and complete authority to conduct . . . the affairs of each undertaking and shall be consulted on all matters concerning the same. . . ." On 31st May, 1950, the managing director wrote asking the plaintiff to resign "owing to the seriousness of the general position" of the first defendants' business, that business being the one to which the plaintiff had been required to devote most of his time. The plaintiff's salary was £10 a week, with £2 a week expenses, and he was paid a week's salary in lieu of notice. He brought this action for damages for wrongful dismissal. The defendants pleaded that they agreed to employ him on trial and that he failed on that trial in that he did not succeed in building up the estate agency business, a substantial loss being in fact incurred, and that he was properly given a week's notice.

PARKER, J., said that he was satisfied that no certain trial period had been fixed. The managing director had said in evidence that he was contemplating a period of a month or less when he appointed the plaintiff. In a sense every employee was taken on on trial. The plaintiff contended, first, that, having regard to the nature of the post, twelve months' notice was reasonable; and, secondly and alternatively, that this was a general hiring entitling him to damages for the period of a year ending on 23rd January, 1951. An employment for an indefinite period was called a general hiring for a year unless something showed a contrary intention. There was a presumption of yearly hiring. It was argued for the plaintiff that there was nothing to rebut the presumption, the fact of weekly payment not having that effect (*Levy* v. *Electrical Wonder Company* (1893), 9 T.L.R. 495). The whole of the facts must be considered in a case of this kind. Taking into account the week's payment of salary and the fact that the plaintiff was being taken on on trial, the contract was more consistent with a hiring for an indefinite period for less than a year than with a hiring for a year. Having regard to the way in which the contract was made, the parties and the method of payment, he (his lordship) felt entitled to regard the presumption of a yearly hiring as rebutted. What, then, was a reasonable notice here? The managing director thought a week. The plaintiff had suggested himself as bound to give no more than three months. The nature of the post and the responsibilities must be considered. To describe the plaintiff as general manager of the three companies was to glorify his position. He had clearly to work under and to the orders of the managing director, and the powers entrusted to him by the agreement were subject to that. The plaintiff was really very little more in these companies than a superior clerk. In all the circumstances, he (his lordship) thought three months a reasonable notice. It appeared likely that the plaintiff would be out of employment for three months from the termination of his employment. He would therefore be awarded £120, three months' salary. Judgment for the plaintiff.

APPEARANCES: *Leonard Caplan* (*William Foux & Co.*); *Gordon Friend* (*W. J. Fraser & Son*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

GOLD WEDDING RINGS: HALL-MARK REQUIREMENTS

Westwood *v.* Cann

Pritchard, J. 3rd October, 1950

Action.

The plaintiff, the assayer to the Guardians of the Standard of Wrought Plate, Birmingham, proved that the defendant, a jeweller, carrying on business in Manchester, exposed for sale in his shop twenty-seven wedding rings all made in the twentieth century. Twenty-one of those rings were below the 9-carat standard of fineness, that was, they contained less than nine parts of gold in twenty-four parts of alloy; four were above the 9-carat standard but below the 14-carat standard; one was of the 14-carat standard; and one was above the 18-carat standard but below the 22-carat standard. None of the rings bore the hall-mark of a British assay office. The plaintiff claimed from the defendant in respect of each ring a penalty of £50 imposed by s. 6 of the Gold Plate (Standard) Act, 1798, on any person who after 1st October, 1798, made, sold or exposed to sale gold wares not duly marked with a hall-mark. (*Cur. adv. vult.*)

PRITCHARD, J., said that the question was whether the four statutory standards—9, 14, 18 and 22 carat—for industrial gold alloys, and complementary statutory requirements that wares made in accordance with those standards should be appropriately marked, had been made to apply to wedding rings. The effect of the Plate (Offences) Act, 1738, and the Gold Plate (Standard) Act, 1798, was that, although, like other gold wares, wedding rings had to be of a given standard, unlike other gold wares of those standards wedding rings of those standards could lawfully be offered for sale although unmarked, and the Gold and Silver Wares Act, 1854, left untouched that exemption. But the Wedding Rings Act, 1855, s. 1, had removed gold wedding rings from the exemption. It had been argued for the defendant that the effect of that Act was that it was not lawful to make gold wedding rings below the 18-carat standard, and that therefore any gold wedding rings below that standard could not come within the statutory provisions relating to the marking of gold plate. That argument was without foundation. As a result of those statutes and the Gold Wares (Standard of Fineness) Order, 1932, gold wedding rings were now in no different position from other gold wares, and, if made of any of the four standards permitted by law, must not be offered for sale unless appropriately marked. The defendant had offered for sale twenty-seven rings of which twenty-one were marked below the 9-carat standard. No offence, therefore, was committed by reason of their having been offered for sale unmarked; they were legally mere base metal. The remaining six were each of one of the permitted standards, but bore no hall-mark.

In respect of each of those the plaintiff had established his claim to recover the penalty of £50 imposed by s. 6 of the Gold Plate (Standard) Act, 1798. He was therefore entitled in respect of the six rings to penalties totalling £300. Judgment for the plaintiff.

APPEARANCES: *H. I. Nelson*, K.C., and *B. S. Wingate-Saul* (*Sharpe, Pritchard & Co.*, for *Ryland, Martineau & Co.*, Birmingham); *Glynn Blackledge*, K.C., and *G. Heilpern* (*Leslie M. Lever & Co.*, Manchester).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

MOTOR-CAR INSURANCE: SPECIAL REASONS

Pilbury *v.* Brazier

Lord Goddard, C.J., Byrne and Ormerod, JJ.
4th October, 1950

Case stated by Essex justices.

The defendant owned a fleet of taxicabs. He was charged with permitting uninsured use of one of the vehicles in contravention of s. 35 of the Road Traffic Act, 1930. The driver having been unable to produce an insurance certificate, the defendant six days later produced at the police station a letter from an insurance company stating that the vehicle was one of those covered by a policy in the defendant's name, but that the insurance in respect of that particular vehicle had been suspended for some weeks as it had been off the road for overhaul; and that, by an oversight, when the vehicle was taken back into service a few days before the offence, they had not been informed. They further wrote that the underwriters at Lloyd's who held the risk confirmed that, had an accident occurred giving rise to a call for indemnity under the policy, they would have considered themselves on risk; and evidence to that effect was given at the hearing. The justices held that special reasons existed why they should not disqualify the defendant under s. 35. The prosecutor appealed.

LORD GODDARD, C.J., said that, generally speaking, to drive an uninsured car was a serious offence. It was often found that, on a technical and strict construction of a policy, underwriters would not be liable to indemnify but that no responsible underwriter would take the particular point against his client. If in such a case the insurer informed the court that he considered himself liable and would have met any claim, it was clear that the mischief to which the Act of 1930 was directed did not arise, and justices would be entitled to refuse to disqualify. Here the justices had ample grounds for finding special reasons for not disqualifying the defendant.

BYRNE and ORMEROD, JJ., agreed. Appeal dismissed.

APPEARANCES: *Airey Neave* (*Sharpe, Pritchard & Co.*, for *Arthur Morgan*, Chelmsford); *I. H. Jacob* (*Gerald Lebor & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

MILK: SAMPLING PROCEDURE

Fenn *v.* Gaze

Lord Goddard, C.J., Byrne and Ormerod, JJ.
5th October, 1950

Case stated by Suffolk justices.

The prosecutor, a sampling officer, with the intention of submitting them to analysis, took at the purchaser's premises samples from churns bearing a label on which appeared merely the surname of the defendant, the farmer who had produced the milk and was its consignor, and then, being aware of the address of the consignor, sent him a third part of each of the samples. It was found on analysis that water had in each case been added to the milk. By s. 70 (2) of the Food and Drugs Act, 1938: "A person taking a sample of any food . . . at the place of delivery to the purchaser . . . or consumer, shall, if he intends to submit it to be analysed . . . deal with it" in accordance with s. 70 (1), "except that he shall retain the" part of the sample which under s. 70 (1) would ordinarily be sent to the consignor "unless the name and address of the consignor appear on the container containing the article sampled, in which case he shall forward that part of the sample to the consignor . . ." Informations preferred against the defendant under s. 24 of the Act were dismissed by the justices, who held that s. 70 (2) required that both the name and address of the defendant as consignor should have been on the churns from which the samples were taken if the sampling officer was to be entitled to send the one part of each sample to the defendant instead of retaining it himself. The prosecutor appealed.

LORD GODDARD, C.J., said that the direction in s. 70 (2) that the sampling officer "shall" retain the part of the sample which would be sent to the consignor if his name and address appeared on the container left the officer free to retain it as long as he pleased, that was, until he discovered who the consignor was, when he could send the part to him. It was no failure to comply with the sampling procedure prescribed by the Act that the officer, knowing who the consignor of the article was, had sent the part to him in the absence of his name and address on the container. The defendant should accordingly have been convicted, and the appeal must be allowed.

BYRNE and ORMEROD, JJ., agreed. Appeal allowed.

APPEARANCES: *L. K. E. Boreham* (*Sherwood & Co.*, for *G. C. Lightfoot*, Ipswich).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

DENIAL OF COSTS TO SUCCESSFUL APPELLANT

Becker *v.* Purchase

Lord Goddard, C.J., Byrne and Ormerod, JJ.
5th October, 1950

Case stated by London Sessions.

The defendant appealed to quarter sessions against his conviction of dangerous driving contrary to s. 11 (1) of the Road Traffic Act, 1930. The act complained of consisted in the defendant's having driven his car on to the pavement in a street in London. The defendant's case, as appeared from cross-examination of the witnesses for the prosecution, was that the driver of a motor-van in front of the defendant's car began reversing, and that the defendant himself drove in the manner described as the only way of avoiding a collision. The justices, at the conclusion of the evidence for the prosecution, announced that the appeal would be allowed, but that there would be no order as to costs. The defendant's counsel having addressed the court on the question of costs, quarter sessions announced that they accepted the defendant's explanation of his actions as an answer to the charge; that they thought that he had acted unnecessarily and unwisely; and that they would therefore award him no costs. The defendant appealed.

LORD GODDARD, C.J., said that the case was certainly unusual. The court could not have interfered with the exercise by the justices of their discretion as to costs if they had given no reason for their order. But they had given as their reason their view that the conduct of the defendant had been imprudent and careless. But that was a matter in issue before them, on which they had not heard the evidence of the defendant or his witnesses. The justices therefore could not be said to have exercised their discretion on proper material, and the case must be remitted to them to hear the defendant's evidence. After hearing it, however, they remained with a discretion to make whatever order as to costs they thought fit. He wished to emphasise that the case must not be taken as laying down that, whenever an appeal was allowed, an information dismissed, or a prisoner acquitted by a jury, the successful party was entitled to costs. Appeal allowed. Case remitted.

APPEARANCES: *Melford Stevenson*, K.C., and *P. W. Medd* (*H. B. Nisbet & Co.*); *E. J. P. Cussen* (*Comptroller and City Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

STREET TRADING: PHOTOGRAPHER

Newman *v.* Lipman

Lord Goddard, C.J., Byrne and Ormerod, JJ.
6th October, 1950

Case stated by a metropolitan magistrate.

The defendant was in Trafalgar Square, a street within the meaning of s. 29 (1) (*a*) of the London County Council (General Powers) Act, 1947, carrying a portable hand camera and soliciting passers-by to have their photographs taken by him. He photographed a woman passing, received from her a sum of money, and gave her a receipt or voucher for it. He was in a stationary position when he photographed her and received money from her. He received that money by way of deposit for and on account of the price of the completed photograph, which was not delivered in the street but which he was subsequently to post to her. The defendant was not on that day authorised by a street trading licence to engage in street trading there. The magistrate dismissed an information charging the defendant with street trading from a stationary position in contravention of s. 29. He was of opinion that the defendant's acts were not "street trading" within the meaning of s. 29 (1) (*a*) and as defined by s. 15 (1) and s. 17 (2) of the Act, inasmuch as he was not occupying the "stationary position" contemplated by s. 17 (2) of the Act and was not "selling or exposing or offering for sale any article or thing." The prosecutor appealed.

LORD GODDARD, C.J., said that he had come to the conclusion, after very careful consideration, that the magistrate was right. Assuming, for the purpose of the present case, that a contract to sell a photograph was one to deliver a chattel within the Sale of Goods Act, 1893, the provisions of the Act of 1947 were not meant to apply to the case where a man agreed to sell goods which were not physically present in the street. The Act of 1947 was passed to prevent obstruction and was contemplating the selling of goods in the street. The appeal failed.

BYRNE and ORMEROD, JJ., agreed. Appeal dismissed.

APPEARANCES: *Arthian Davies*, K.C., and *Sebag Shaw* (*Allen & Son*); the defendant did not appear and was not represented; *B. S. Wingate-Saul* (*Treasury Solicitor*), *amicus curiæ*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PENSIONS: VARICOSE VEINS

Wallbridge *v.* Minister of Pensions

Ormerod, J. 12th October, 1950

Case stated by a pensions appeal tribunal.

The claimant was refused a pension for varicose veins. The tribunal, finding that he had had varicose veins before September, 1939, when his war service began, awarded him a pension on the basis that his condition had been aggravated by, but was not attributable to, his war service. He now appealed.

ORMEROD, J., said that the appeal, on the evidence, must fail. But the matter did not end there, for the chairman of the tribunal had expressed some doubt on *Wills* v. *Minister of Pensions*, 4 War Pension Appeals Reports 539, and stated that chairmen of tribunals had frequently been uncertain of its effect. There the varicose veins were manifest within a month of the claimant starting his war service, and must clearly have been there before service began. The tribunal there heard the evidence of distinguished pathologists on both sides, and the effect of the evidence given by one of them was that the condition of varicose veins arose only in people with a predisposition, whether congenital or otherwise, and that in such people the condition developed largely independently of the kind of work which they did; it was therefore unlikely that war service affected them. The result of *Wills* v. *Minister of Pensions*, *supra*, therefore, was that, if a man suffered from varicose veins or they became manifest during war service, it was difficult for a tribunal to hold that varicose veins were attributable to that service unless there were some evidence to show that there had been a supervening cause other than ordinary conditions of war service. Failing a supervening cause, *Wills's* case, *supra*, must be taken to mean that service conditions in the ordinary way could not be regarded as causing a condition of varicose veins, although they might aggravate it. He (his lordship) hoped that his judgment would clear away any doubt which had arisen as to the meaning of *Wills's* case, *supra*.

APPEARANCES: *D. E. P. Evans* (*Donald, Darlington and Nice*); *J. P. Ashworth* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

PROBATE: "ACTE DE PARTAGE"

In re Queen Marie of Roumania, deceased

Pearce, J. 26th July, 1950

Probate motion.

The late Queen Dowager Marie of Roumania died on 18th July, 1938, domiciled in Roumania, leaving five children. She was believed to have left a will, but it proved impossible to obtain it or a copy of it from Roumania. The five children had all executed on 11th August, 1938, an "acte de partage" embodying a friendly partition of the deceased's estate made in accordance with Roumanian law and custom. Such a partition would be based on the will of the deceased if there were one. Application was now made by or on behalf of those interested for an order that a copy of the acte de partage or a duly verified translation of it should be admitted to probate as the will of the deceased until such time as the original should be found.

PEARCE, J., ordered "that the will" of the deceased "be admitted to probate as contained in the copy acte de partage (to which is attached a duly notarially certified copy thereof) . . . And it is further ordered that letters of administration with the said will annexed be granted to" the applicant "one of the persons entitled to administer the estate of the above-named deceased with the said will annexed by the law of the place where the said deceased died domiciled; the grant being limited until the original will or a more authentic copy thereof be brought into and lodged in the registry."

APPEARANCES: *Charles Russell*, K.C., and *A. R. Ellis* (applicant); *R. L. Bayne-Powell* (remaining children) (*Ellis, Peirs & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

HUSBAND AND WIFE: COMPULSORY SETTLEMENT IN FAVOUR OF CHILDREN

M. *v.* M.

Wallington, J. 12th October, 1950

Applications under ss. 191 and 192 of the Supreme Court of Judicature (Consolidation) Act, 1925.

The applicant husband (petitioner) sought variation of a post-nuptial settlement under s. 192 and an order under s. 191 that his wife should settle a sum of money for the benefit of the children so that they might be compensated for any acceleration of the husband's powers of appointment in favour of an after-taken spouse or family which might result from the variation prayed. By s. 191 (1) of the Act of 1925 where a decree of divorce or judicial separation has been pronounced against the wife, and it appears to the court "that the wife is entitled to any property, either in possession or reversion, the court may, if it thinks fit, order such settlement as it thinks reasonable to be made of the property, or any part thereof, for the benefit of . . . the children of the marriage . . ."

WALLINGTON, J., said that, though he knew of no reported case on the power to compel the execution of a settlement in favour of the children of the marriage, in order to make good

such loss as they might suffer from a benefit to the petitioner from the variation proposed, he considered that in the circumstances the present case was a proper one for such a settlement. In addition to varying the post-nuptial settlement, he would make an order that the wife should vest in trustees the sum of £5,000 on trust to pay the income to her for life and after her death in trust, as to both capital and income, for the children of the marriage. Application granted.

APPEARANCES: *J. E. S. Simon* (*Charles Russell & Co.*); *Victor Williams* (*Thompson, Quarrell & Megaw*); *J. B. Gardner* (*R. L. Bayne-Powell* with him) (*Pothecary & Barratt*) (children); *O. Swingland* (*Farrer & Co.*) (trustees).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Bacon (Rationing) (Amendment No. 4) Order, 1950. (S.I. 1950 No. 1625.)

British Honduras (Alteration of Boundaries) Order in Council, 1950. (S.I. 1950 No. 1649.)

Cardiff-Brecon-Builth Wells-Llangurig Trunk Road (Whitchurch By-Pass) Order, 1950. (S.I. 1950 No. 1618.)

Civil Defence (Designation of the Minister of Food) Order, 1950. (S.I. 1950 No. 1650.)

Copyright (United States of America) Order, 1942 (Amendment) Order, 1950. (S.I. 1950 No. 1641.)

County Council of the County of Sutherland (Loch na H-Uamhachd) Water Order, 1950. (S.I. 1950 No. 1637.)

Courts (Emergency Powers) (End of Emergency) Order, 1950. (S.I. 1950 No. 1647.)

This Order fixes 8th October, 1950, as the date of the ending of the "emergency" which occasioned the passing of the Courts (Emergency Powers) Act, 1939. The Order thus removes the necessity for applications for leave to proceed formerly required by the Courts (Emergency Powers) Act, 1943.

Distribution of German Enemy Property (No. 1) Order, 1950. (S.I. 1950 No. 1642.)

Exchange Control (Channel Islands) Order, 1950. (S.I. 1950 No. 1651.)

Export of Goods (Control) (Amendment No. 5) Order, 1950. (S.I. 1950 No. 1629.)

Flour Confectionery (Amendment No. 2) Order, 1950. (S.I. 1950 No. 1646.)

Fur Apparel Order, 1950. (S.I. 1950 No. 1633.)

Gambia Legislative Council (Extension of Tenure of Offices) Order in Council, 1950. (S.I. 1950 No. 1644.)

General Hollow-ware (Maximum Prices) (Amendment No. 2) Order, 1950. (S.I. 1950 No. 1621.)

Housing (Rate of Interest) Regulations Revocation Order, 1950. (S.I. 1950 No. 1648.)

Indian Civil Service Family Pension Fund (Amendment) Rules, 1950. (S.I. 1950 No. 1656.)

Juvenile Courts (Constitution) (Amendment) Rules, 1950. (S.I. 1950 No. 1627 (L.25).)

These Rules provide that no justice shall be a member of a juvenile court panel who, on or after 1st February, 1951, has attained the age of sixty-five. Members who are already sixty-five on that date will lose their appointments. The Lord Chancellor can make exceptions in an area where there are not sufficient younger justices. The Rules do not apply to a stipendiary magistrate who holds office as such.

National Service (Isle of Man) Order, 1950. (S.I. 1950 No. 1652.)

North Borneo (Legislative Council) Order in Council, 1950. (S.I. 1950 No. 1643.)

Patents, etc. (Dominican Republic) (Convention) Order, 1950. (S.I. 1950 No. 1653.)

Rice Order, 1950. (S.I. 1950 No. 1617.)

Somaliland Order in Council, 1950. (S.I. 1950 No. 1645.)

Utility Apparel (Women's and Maids' Outerwear) (Manufacture and Supply) (Amendment) Order, 1950. (S.I. 1950 No. 1605.)

Utility Corsets (Manufacture and Supply) (Amendment No. 2) Order, 1950. (S.I. 1950 No. 1604.)

Utility Fur Apparel (Maximum Prices and Charges) Order, 1950. (S.I. 1950 No. 1634.)

NOTES AND NEWS

Honours and Appointments

The King has been pleased, on the recommendation of the Lord Chancellor, to make the following appointments: Mr. E. R. BOWEN to be Recorder of the County of the Borough of Carmarthen; Mr. C. H. GAGE to be Recorder of the Boroughs of Maldon and Saffron Walden; Mr. D. H. ROBSON to be Recorder of the Borough of Doncaster; Mr. C. N. SHAWCROSS, K.C., to be Recorder of the City of Nottingham; Mr. G. DE P. VEALE to be Recorder of the Borough of Scarborough; Mr. R. M. WILSON, K.C., to be Recorder of the Borough of Faversham; Mr. B. S. WINGATE-SAUL to be Recorder of the Borough of Oldham; and Mr. S. G. TURNER, O.B.E., K.C., and Mr. J. R. ADAMS, K.C., to be Chairman and Deputy Chairman respectively of the Court of Quarter Sessions of the County of Essex.

Mr. STANLEY DODD, senior legal assistant to the North West Coal Board, has been appointed Deputy Labour Director of the Board.

Miscellaneous

THE SALFORD HUNDRED COURT

According to the *Accountant* of 14th October, the Chancellor of the Duchy of Lancaster has appointed a committee to report to him on the Salford Hundred Court of Record. The committee consists of Mr. G. R. Upjohn, C.B.E., K.C., Attorney-General of the Duchy of Lancaster, who is the chairman; Sir Godfrey Russell Vick, K.C.; Sir Harold Parkinson, O.B.E.; Mr. C. W. Boyce, C.B.E., F.C.A., Vice-President of The Institute of Chartered Accountants; and Mr. Ernest Farrington. Its terms of reference are to inquire into the practice and procedure of the court and to report how far the court is now of benefit to the parties for whom it is intended, whether any changes in its practice or procedure are desirable, and whether an increase in its monetary jurisdiction is desirable. The committee is proceeding to take evidence on the matters referred to it, and any person or body wishing to express views or make observations are invited to communicate with the secretary of the committee, Mr. R. Somerville, at the Duchy of Lancaster Office, Lancaster Place, Strand, London, W.C.2.

INTESTACY COMMITTEE

The Lord Chancellor has appointed the following as members of this Committee: Lord Morton of Henryton (Chairman); Mr. M. Albery; Mr. B. E. Astbury, O.B.E.; Mr. A. W. Brown; Sir Hugh Chance; Mr. E. G. M. Fletcher, M.P.; Mr. J. G. Foster, K.C., M.P.; Lord Kershaw, O.B.E.; and Mrs. Dorothy Rees, M.P. Mr. D. R. Holloway, of the Principal Probate Registry, Somerset House, London, W.C.2, will be secretary of the Committee.

The terms of reference were announced by the Attorney-General in the House of Commons on the 31st July, and are as follows:—

1. To consider the rights under s. 46 of the Administration of Estates Act, 1925, of a surviving spouse in the residuary estate of an intestate.
2. To consider whether, and if so to what extent and in what manner, the provisions of the Inheritance (Family Provision) Act, 1938, ought to be made applicable to intestacies.
3. To report whether any, and if so what, alteration in the law is desirable.

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